

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Hyde	Team: Team # 3	CCRB Case #: 200807260	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/10/2008 2:45 PM	Location of Incident: 41st Street and 10th Avenue	Precinct: 10	18 Mo. SOL 11/10/2009	EO SOL 11/10/2009	
Date/Time CV Reported Wed, 05/21/2008 11:55 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Wed, 05/21/2008 11:55 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Frank Altieri	03227	923499	NARCBMS
2. POM Frederic Ortiz	29958	935440	NARCBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Joseph King	06514	920467	NARCBMS
2. LT Ernest Lungaro		894138	
3. § 87(2)(e), § 87(2)(f)		000000	
4. § 87(2)(e), § 87(2)(f)		000000	

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Frank Altieri	Abuse: Det. Frank Altieri stopped § 87(2)(b)	
B.POM Frederic Ortiz	Abuse: PO Frederic Ortiz stopped § 87(2)(b)	
C.DT3 Frank Altieri	Abuse: Det. Frank Altieri searched § 87(2)(b)	
D.POM Frederic Ortiz	Abuse: PO Frederic Ortiz searched § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

## Synopsis

§ 87(2)(b) mailed a typed complaint regarding this incident to the CCRB, which was received at the CCRB on May 21, 2008 (encl.4a-4d). § 87(2)(b) alleged that on May 10, 2008 at approximately 3:00 PM, he was walking on West 41<sup>st</sup> Street near 10<sup>th</sup> Avenue in Manhattan when he was stopped and searched by Det. Frank Altieri and PO Frederic Ortiz from Narcotics Borough Manhattan South (Allegations A, B, C and D). § 87(2)(b) was eventually released without being summonsed or arrested. Three others, § 87(2)(b) and § 87(2)(b) who are unknown to § 87(2)(b) were arrested at the scene for § 87(2)(b) § 87(4-b) § 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

## Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'6" tall and weighs 130 pounds. § 87(2)(b) provided a phone statement to the CCRB on May 27, 2008 (encl.4e), and was interviewed at the CCRB on June 4, 2008 (encl.4f-4k). § 87(2)(g)

On May 10, 2008, at 1:30 PM, § 87(2)(b) attended a doctor's appointment at § 87(2)(b) in Manhattan. Following his appointment at approximately 3:00 PM, § 87(2)(b) was walking on West 41<sup>st</sup> Street toward 10<sup>th</sup> Avenue. As he walked, § 87(2)(b) saw four to five black males standing against a building underneath scaffolding. § 87(2)(b) did not know the males. Through investigation, three of these males were identified as § 87(2)(b) and § 87(2)(b). It was also determined that the males were standing in front of 450 West 41<sup>st</sup> Street in Manhattan. § 87(2)(b) stated that he was approximately three meters away from the males when he first noticed them.

As § 87(2)(b) walked past the males, § 87(2)(b) did not say anything to them, they did not say anything to him, and § 87(2)(b) did not pause or stop walking. The males were talking amongst themselves at a loud volume, but § 87(2)(b) did not pay attention to what they were saying. § 87(2)(b) did not come into physical contact with the males, exchange any objects with them, or interact with them in any way.

When § 87(2)(b) was almost past the males, an unidentified police officer grabbed § 87(2)(b)'s right arm from behind and pulled it behind § 87(2)(b)'s back. At the time, § 87(2)(b) did not know that the person who had grabbed him was a police officer. Due to the force of being grabbed, § 87(2)(b) fell onto his right knee and then facedown onto the ground. As he fell, § 87(2)(b) dropped the plastic bag that he was holding and his hat fell off. While § 87(2)(b) was lying on the ground, two people were standing above him. § 87(2)(b) looked up and saw a silver shield. At that moment, § 87(2)(b) realized that the person who had grabbed him was a police officer; however, § 87(2)(b) could not see the officers' faces at that point. § 87(2)(b) was handcuffed while he was facedown on the ground and his back jean pockets were searched. § 87(2)(b) had his wallet in his right back pocket and a comb and napkins in his left back pocket. § 87(2)(b) stated that the officers reached into the pockets but did not remove the objects. An officer also felt inside his waistband. § 87(2)(b) did not know how many officers handcuffed and searched him. § 87(2)(b) could not describe the officers that did so because he was facedown on the ground at the time. The officers did not say anything to § 87(2)(b) while he was on the ground. § 87(2)(b) was lying on the ground for approximately five minutes and then the officers helped him stand up.

As he stood up, § 87(2)(b) was able to get a better look at the two officers who he assumed had grabbed, handcuffed and searched him. These officers were in plainclothes. § 87(2)(b) described Det. Frank

Altieri, who was identified through investigation, as a white male with a muscular build, light brown hair, about 5'9" tall and approximately 32 years old. § 87(2)(b) described PO Frederic Ortiz, who was also identified through investigation, as a heavyset bald Puerto Rican male, who was 5'8" tall and in his early 30s. § 87(2)(b) was placed against the wall of the building so that he was standing in between the four to five males he had previously observed. Det. Altieri and PO Ortiz searched § 87(2)(b) again. They searched inside his front pants pockets and jacket pockets. § 87(2)(b) had a cell phone in his front right pocket and an ID card holder which contained his identification and a metro card in his front left pocket. § 87(2)(b) did not have objects in his jacket pockets. The officers did not remove any objects from his pockets during the search. While § 87(2)(b) was being searched, Det. Joseph King, who was identified through investigation, arrived and picked up § 87(2)(b)'s hat, which was on the ground, and looked inside of the hat. Det. King was also looking at what appeared to be tobacco scattered on the sidewalk. § 87(2)(b) had not noticed the tobacco on the ground prior to this point in the incident. § 87(2)(b) described Det. King as an Italian male with a muscular build, short dark hair, about 5'10" tall and in his early 30s. Det. King was also in plainclothes.

PO Ortiz then asked § 87(2)(b) if he used drugs or had any drugs on him. § 87(2)(b) responded that he did not have or use any drugs. PO Ortiz asked § 87(2)(b) if he knew the male that was standing to his right and § 87(2)(b) replied that he did not. PO Ortiz then asked the male to § 87(2)(b)'s right whether he knew § 87(2)(b) and the male replied that he did not. At that point, § 87(2)(b) noticed that a fourth plainclothes officer was at the scene. § 87(2)(b) described this officer, who was identified through investigation as Lt. Lungaro (who is now retired from the service), as a white male with a muscular build, brown hair, about 5'9" tall and in his early 30s.

§ 87(2)(b) did not see the officers come into physical contact with any of the other males who were stopped and during the incident, the males continued to talk amongst themselves. The males were not handcuffed at that time. § 87(2)(b) stood handcuffed against the building for approximately twenty minutes. He did not speak to or interact with the officers during that time. An officer then removed § 87(2)(b)'s handcuffs and asked for his name and date of birth. § 87(2)(b) responded with this information and handed his identification to the officer. § 87(2)(b) did not recall which officer he handed it to. The officer took the ID to an unmarked van that was parked across the street. The officer was inside the van for approximately three minutes. § 87(2)(b) could not see what the officer was doing inside the van. When the officer returned, he gave § 87(2)(b) his ID back and told him to leave. The officer did not give § 87(2)(b) a summons or any other paperwork. As § 87(2)(b) was leaving, he saw the officers handcuff the other males who were stopped. § 87(2)(b) stated that the officers did not use physical force to handcuff the males.

At some point during the incident, § 87(2)(b) observed that one of the officer's badge numbers was 3227; however, he did not recall which one.

Following the incident, § 87(2)(b) sought medical treatment at the § 87(2)(b) on § 87(2)(b) and § 87(2)(b) (encl.6a-6t). He complained to medical personnel that he was assaulted and "attacked" by police officers. He sustained a bloody and bruised knee from falling to the ground and shoulder pain. Two weeks prior to the incident, § 87(2)(b) had had an appendectomy and he complained of aggravated abdominal pain as a result of this incident.

### **Results of Investigation**

#### **Attempts to ID and locate additional witnesses**

Three arrest reports from the incident date, time and location were obtained for the purpose of identifying the individuals who were arrested during this incident. The arrest reports identified § 87(2)(b) and § 87(2)(b). All three individuals were black males, as described by § 87(2)(b). Although § 87(2)(b) described four to five black males as being present, it is unclear how many individuals were actually present during this incident, as only three were arrested.

On August 27, 2008 and October 21, 2008, please call letters were sent to § 87(2)(b) and § 87(2)(b). Letters sent to § 87(2)(b) and § 87(2)(b) were returned to the CCRB by the United States Postal Service and searches of the Lexis Nexis database and subpoenas to the Verizon Legal Compliance did not uncover any further contact information for either § 87(2)(b) or § 87(2)(b). A Lexis Nexis search for § 87(2)(b) also proved negative; however, a Verizon subpoena provided a contact phone number for him. Between September 5, 2008 and October 27, 2008, the CCRB called § 87(2)(b) three times and left three voicemail messages for him. On November 17, 2008 and November 19, 2008, the CCRB called § 87(2)(b) two more times, however, his phone number had been temporarily disconnected. As of the date of this report, § 87(2)(b) has not contacted the CCRB.

## **Officer Statements**

### **Identification of Officers Interviewed**

Det. King was the arresting officer for the individuals who were arrested during this incident. Therefore, he was interviewed. Det. King's partner, Lt. Lungaro, is currently retired from the service and he was therefore not interviewed for this case. On the date of the incident, Det. King and Lt. Lungaro were working on a narcotics field team for Narcotics Borough Manhattan South. Also assigned to their field team were Det. Altieri and PO Ortiz, who were partners and who matched the description of the subject officers. Therefore, Det. Altieri and PO Ortiz were interviewed.

#### **Det. Frank Altieri**

*Det. Frank Altieri is a § 87(2)(b)-old Hispanic male. He is 5'9" tall, 200 pounds, and has black hair and brown eyes. Det. Altieri was interviewed at the CCRB on January 16, 2009 (encl.5c-5e).*

On May 10, 2008, Det. Altieri worked from 9:27 AM until 9:00 PM. His assignment was the prisoner van and he was working with PO Ortiz. He was dressed in plainclothes. Det. Altieri did not have any memo book entries in regard to this incident (encl.5a-5b).

On May 10, 2008, around 3:00 PM, Det. Altieri participated in a buy and bust operation in which arrests were made in front of 450 West 41 Street in Manhattan, near a shelter. The undercover officer that was working with Det. Altieri's field team made a narcotics related observation. Det. Altieri did not recall what the observation consisted of. He believed that he heard the description of the observation over the radio, but did not recall the specific details. Det. Altieri responded to the location, but did not remember how many individuals were arrested at the scene. Because he was unable to recall the incident, Det. Altieri stated that he likely took the prisoners into custody, brought them to the precinct, searched, lodged, fingerprinted, and processed them, and subsequently transported them to either Manhattan Central Booking or Community Court.

Det. Altieri did not recall any light-skinned Hispanic males being present at the scene. He did not recognize § 87(2)(b) in a photograph. He did not recall handcuffing anyone at the scene. Det. Altieri did not recall searching or frisking anyone at the scene. Det. Altieri recalled that marijuana was recovered from the scene, but he did not recall when or from where it was recovered.

#### **PO Frederic Ortiz**

*PO Frederic Ortiz is a § 87(2)(b)-old Hispanic male, who is 5'10" tall, 200 pounds, bald, and has brown eyes. PO Ortiz was interviewed at the CCRB on January 16, 2009 (encl.5h-5i).*

On May 10, 2008, PO Ortiz worked from 9:33 AM until 9:00 PM. His assignment was the prisoner van and he was working with Det. Altieri. He was dressed in plainclothes. PO Ortiz but did not have any memo book entries in regard to this incident (encl.5f-5g).

On May 10, 2008, around 3:00 PM, PO Ortiz was participating in a buy and bust operation. His narcotics team was working with two undercover officers; however, he did not recall their extent of involvement in

this particular incident. PO Ortiz did not recall whether the undercover officers made a narcotics related observation or whether they made a narcotics purchase.

Upon his arrival at the scene, PO Ortiz recalled three black males being arrested but did not remember why they were arrested or anything prior to their arrests. He did not recall when the males were handcuffed, or by whom, but recalled observing the males standing against a wall. Later in his statement, PO Ortiz contradicted himself and stated that he did not recall the males standing against a wall. He also contradicted himself by stating that he observed the males being handcuffed, and subsequently being brought to him by other officers, but he did recall by whom. PO Ortiz did not handcuff anyone at the scene. While the males were being searched, by whom he did not recall, PO Ortiz recalled seeing a “marijuana cigarette” on the ground. PO Ortiz picked it up, placed it into a yellow envelope, and handed it over to the arresting officer, Det. King. PO Ortiz did not recall any other items recovered at the scene.

PO Ortiz recalled the three arrested males being placed into the prisoner van. He searched the individuals for contraband and weapons as they entered the van. PO Ortiz again contradicted himself by stating that he did not recall whether any other officers searched the individuals prior to his search of them. This search included frisking the males (which he again, later in his statement, did not recall doing), emptying their pockets, and putting the acquired objects into an envelope.

PO Ortiz did not recognize § 87(2)(b) in a photograph nor did he see any light-skinned Hispanic males at the scene. He did not use any physical force during the incident, nor did he recall apprehending anyone. PO Ortiz did not recall which other officers were present at the scene, however, he recalled Det. King arriving toward the end of the incident and inquiring about what had happened.

#### **Det. Joseph King**

*Det. Joseph King is a § 87(2)(b)-old white male who is 5’10” tall, weighs 220 pounds, and has brown hair and hazel eyes. Det. King was interviewed at the CCRB on January 16, 2009 (encl.5u-5w).*

*Arrest Reports § 87(2)(b) and § 87(2)(b), which were completed by Det. King, indicate the arrests of § 87(2)(b) and § 87(2)(b) respectively. § 87(2)(a) 160.50*

*§ 87(2)(b) (encl.5j-5r).*

On May 10, 2008, Det. King worked from 9:27 AM until 10:15 PM. He was assigned as the arresting officer for a narcotics field team and was working with Lt. Lungaro, who is currently retired from the service. Det. King was dressed in plainclothes and utilizing an unmarked gray Jeep Cherokee. Det. King did not have any memo book entries regarding this incident (encl.5s-5t).

On May 10, 2008, around 3:00 PM, Det. King and Lt. Lungaro received a radio transmission from one the two undercover officers who were assigned to their field team that day. Det. King did not recall which undercover provided the transmission over the radio. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) A clothing description of the individuals was likely provided, but Det. King did not specifically recall whether one was provided. Det. King did not recall any further information regarding the radio transmission by the undercover.

Because of the undercover’s observation, the narcotics field team moved in and apprehended the individuals. Lt. Lungaro and Det. King were in the vicinity of West 42<sup>nd</sup> Street and 9<sup>th</sup> Avenue when they



(b) (7)(D), §  
(e), §  
(f)

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

§ 87(2)(e), § 87(2)(f)

## Medical Records

§ 87(2)(b)

§ 87(2)(b) sought medical treatment on § 87(2)(b) at § 87(2)(b). § 87(2)(b) had had an appendectomy two weeks prior. § 87(2)(b) reported to medical personnel that he was assaulted by police officers § 87(2)(b) days prior on May 10, 2008. He complained of pain and anxiety due to the incident. A slight bruise on the back of § 87(2)(b)'s left tricep, two slight bruises on his back, and a contusion on his right kneecap (non-tender, no swelling) were noted. An x-ray was ordered of the lumbar spine (which showed a slight increase in the lumbosacral angle and mild degenerative osteophyte formation) and § 87(2)(b) was referred to psychiatric without a full examination or treatment. He was provided with 10 pills of Ambien for the time being.

§ 87(2)(b) sought medical treatment on § 87(2)(b) at § 87(2)(b), in which he reported abdominal pain due to an appendectomy, and which he complained was aggravated by the incident with police officers. An x-ray of his abdomen and pelvis were requested. A lesion was found on his right kidney, which was most likely benign.

§ 87(2)(b) sought medical treatment on § 87(2)(b) at § 87(2)(b). § 87(2)(b) indicated that he had no abdominal pain remaining. § 87(2)(b) reported mild right shoulder pain which was improving every day. § 87(2)(b) had no further diagnoses, and was instructed to schedule a follow-up exam (encl.6a-6t).

## Police Documents

### Command Log



The 10<sup>th</sup> Precinct command log entry for May 10, 2008 did not indicate the arrests of § 87(2)(b) and § 87(2)(b) (encl.7a).

### **Roll Call / Tactical Plan**

The May 10, 2008 Narcotics Borough Manhattan South roll call and tactical plan for the 10-01 module indicates that Lt. Lungaro and Det. King were working together in a gray suburban and Det. Altieri and PO Ortiz were working together in a white ford prisoner van. Det. Lahens, Det. Ruiz and Det. Rabah were also assigned to the 10-01 module. § 87(2)(e) were working with the module as well (encl.7b-7g).

### **Leave of Service Information**

Lt. Ernest Lungaro retired from the service as of July 1, 2008. As a result, he was not interviewed for this case (encl.7h).

### **Criminal Conviction History of Civilian**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History**

§ 87(2)(b) has not filed any previous complaints with the CCRB (encl.3)

### **Subject Officer CCRB History**

After ten years with the NYPD, Det. Altieri does not have any substantiated allegations on his CCRB history (encl.2a). After five years with the NYPD, PO Ortiz has no substantiated allegations on his CCRB history (encl.2b).

## **Conclusions and Recommendations**

### **Subject Officer Identification**

§ 87(2)(b) alleged that was initially apprehended by two plainclothes officers, one of which had a silver shield. He described one of these officers as a white male with a muscular build, light brown hair, about 5'9" tall and approximately 32 years old and the other as a heavyset bald Puerto Rican male, about 5'8" tall and in his early 30s. Det. Altieri and PO Ortiz, who acknowledged their presence during this incident, matched the description of the subject officers and were working together. Det. Altieri is a § 87(2)(b)-old Hispanic male who is 5'9" tall, 200 pounds, and has dirty blond hair and brown eyes. PO Ortiz is a § 87(2)(b)-old Hispanic male, who is 5'10" tall, 200 pounds, bald, and has brown eyes. Although § 87(2)(b) described Det. Altieri as a white male rather than Hispanic, Det. Altieri's MOS photo (encl.7i) depicts him as being very light-skinned with dirty blond or light brown hair, thus matching the description as provided. Additionally, PO Ortiz, as the rank of police officer, was the only officer present who would have had a silver shield; all other officers assigned to the narcotics field team were detectives and would have had gold shields. § 87(2)(b) also provided the shield number of Det. Altieri during his in-person statement at the CCRB. Although § 87(2)(b) did not recall which officer this shield number belonged to, it is reasonable to believe that it belonged to one of the officers who initially apprehended him and who dominantly interacted with him.

It should also be noted that Det. King testified that other officers from his field team had already apprehended the individuals, including § 87(2)(b) once he and Lt. Lungaro arrived. Det. King and Lt. Lungaro matched the descriptions as provided by § 87(2)(b) as the second set of officers who arrived at the scene. According to § 87(2)(b) only four officers responded to the scene. Although Det. Lahens, Det. Ruiz and Det. Rabah were listed on the tactical plan as being partners on the narcotics field team with

Det. Altieri, PO Ortiz, Det. King and Lt. Lungaro, it has been determined that they did not respond to the scene and were not present for this incident.

§ 87(2)(g)

### Undisputed Facts

It is undisputed that § 87(2)(b) was apprehended by a narcotics field team. It is undisputed that § 87(2)(b) was released after an investigation was conducted without being summonsed or arrested. It is undisputed that § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(a) 160.50

### Disputed Facts

§ 87(2)(g)

### Assessment of Evidence

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) The field team then moved in and apprehended at least three black males, § 87(2)(b) and § 87(2)(b) and one light-skinned Hispanic male, § 87(2)(b) § 87(2)(b), and § 87(2)(b) were later arrested. Although § 87(2)(b) did not admit to interacting with § 87(2)(b) and § 87(2)(b) and indicated that he was simply walking past them, his testimony is implausible. § 87(2)(e), § 87(2)(f), § 87(2)(g)

§ 87(2)(g)

**Allegation A: Det. Frank Altieri stopped** § 87(2)(b)

**Allegation B: PO Frederic Ortiz stopped** § 87(2)(b)

**Allegation C: Det. Frank Altieri searched** § 87(2)(b)

**Allegation D: PO Frederic Ortiz searched** Fracisco § 87(2)(b)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) § 87(2)(b) § 87(2)(b) The narcotics team in fact

apprehended a group of several black males and one light-skinned Hispanic male at that location. PO Ortiz testified that he recalled seeing a marijuana cigarette (a “blunt”) on the ground and that it was recovered. § 87(2)(b) also testified that he observed a substance which resembled tobacco scattered on the ground. The marijuana, in combination with the information from the undercover officer that implicated the entire group as having smoked marijuana, gave the officers probable cause to place everyone under arrest immediately upon apprehension. According to *Barry Kamins’ New York Search and Seizure*, probable cause requires a reasonable cause to believe that a crime has been committed and that the individual to be arrested committed the crime (encl.1a). § 87(2)(b) upon being handcuffed, was also searched; however, no illegal contraband was recovered from his person.

According to *NYPD v. Harris* (Oct. 2004), “An inference may be drawn that probable cause to arrest exists when a trained and experienced narcotics officer observes what appears to him to be an illegal drug transaction...moreover, a police officer is entitled to assume that information contained in a Department radio transmission made by a fellow police officer is reliable...the officer receiving the information is justified in taking police action consistent with that information. Finally, where the information contained in a Department radio transmission furnishes the receiving officer with presumptive probable cause, a reasonable search of the suspect is permitted” (encl.1b-1c)

§ 87(2)(e), § 87(2)(f)

According to § 87(2)(b) he was asked by the officers whether he knew the males, which he did not. The officers also asked the males whether they knew § 87(2)(b) which they did not. Considering § 87(2)(b) did not know the males, was not observed to be in direct possession of marijuana, and did not have any illegal contraband on his person, he was released without being summonsed or arrested. The officers used their discretion in doing so.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: